

# INDEX

	Page
Opinions below.....	1
Jurisdiction.....	1
Question presented.....	2
Statutes involved.....	2
Statement.....	2
Summary of argument.....	8
Argument:	
The New York statute unduly burdens the power of national banks to receive and advertise for savings deposits, and therefore conflicts with controlling Federal law.....	12
A. The state statute impairs the federally created power to receive savings deposits and advertise effectively for such business.....	17
B. The New York statute as applied in this case cannot be sustained by the State's asserted purpose of preventing deception.....	34
Conclusion.....	38
Appendix.....	39

## CITATIONS

### Cases:

<i>Adams v. United States</i> , 319 U. S. 312.....	34
<i>Akins v. Texas</i> , 325 U. S. 398.....	25
<i>Anderson National Bank v. Lockett</i> , 321 U. S. 233.....	12, 13, 14, 22, 26
<i>Burnes National Bank v. Duncan</i> , 265 U. S. 17.....	30
<i>Chambers v. Florida</i> , 309 U. S. 227.....	25
<i>Clement National Bank v. Vermont</i> , 231 U. S. 120.....	14, 18, 19, 22, 30
<i>Craig v. Harney</i> , 331 U. S. 367.....	25
<i>Davis v. Elmira Savings Bank</i> , 161 U. S. 275.....	10, 13, 17
<i>Davis v. Farmers Co-operative Co.</i> , 262 U. S. 312.....	19
<i>Easton v. Iowa</i> , 188 U. S. 220.....	10, 13
<i>Edward's Lessee v. Darby</i> , 12 Wheat. 207.....	34
<i>Fay v. New York</i> , 332 U. S. 261.....	25
<i>Federal Trade Commission v. Raladam Corp.</i> , 316 U. S. 149.....	24
<i>Fidelity National Bank and Trust Co. v. Enright</i> , 264 Fed. 236.....	33
<i>First National Bank v. Anderson</i> , 269 U. S. 341.....	30
<i>First National Bank v. California</i> , 262 U. S. 366.....	10, 12, 22, 26
<i>First National Bank v. Fellows</i> , 244 U. S. 416.....	15, 30
<i>First National Bank v. Hartford</i> , 273 U. S. 548.....	14, 23, 25, 30

## II

### Cases—Continued

	Page
<i>First National Bank v. Missouri</i> , 263 U. S. 640.....	13, 30
<i>Fiske v. Kansas</i> , 274 U. S. 380.....	25
<i>Great Northern Ry. Co. v. Washington</i> , 300 U. S. 154.....	25
<i>Hooven &amp; Allison Co. v. Evatt</i> , 324 U. S. 652.....	25
<i>Jennings v. United States Fidelity &amp; Guaranty Co.</i> , 294 U. S. 216.....	13
<i>Johnson v. Maryland</i> , 254 U. S. 51.....	37
<i>Kansas City Southern R. Co. v. Alberts Comm'n Co.</i> , 223 U. S. 573.....	25
<i>Lewis v. Fidelity Co.</i> , 292 U. S. 559.....	13, 14, 17
<i>Mayo v. United States</i> , 319 U. S. 441.....	37
<i>McClellan v. Chipman</i> , 164 U. S. 347.....	14
<i>McCulloch v. Maryland</i> , 4 Wheat. 316.....	13
<i>National Bank v. Commonwealth</i> , 9 Wall. 353.....	14
<i>Norwegian Nitrogen Products Co. v. United States</i> , 288 U. S. 294.....	11, 34
<i>Ohio v. Thomas</i> , 173 U. S. 276.....	37
<i>Oyama v. California</i> , 332 U. S. 633.....	25
<i>Patton v. Mississippi</i> , 332 U. S. 463.....	25
<i>Pennekamp v. Florida</i> , 328 U. S. 331.....	25
<i>Pierre v. Louisiana</i> , 306 U. S. 354.....	25
<i>Pollock v. Williams</i> , 322 U. S. 4.....	25
<i>Roth v. Delano</i> , 338 U. S. 226.....	14
<i>Taylor v. Mississippi</i> , 319 U. S. 583.....	25
<i>Truax v. Corrigan</i> , 257 U. S. 312.....	25
<i>United States v. American Trucking Ass'ns, Inc.</i> , 310 U. S. 534.....	11, 34
<i>Waite v. Dowley</i> , 94 U. S. 527.....	13
<b>Constitution and Statutes:</b>	
Constitution of the United States, Art. VI, cl. 2.....	8, 12
Act of May 24, 1926, Sec. 3, 44 Stat. 628.....	19
Act of August 23, 1935, c. 614, 49 Stat. 706.....	28
Federal Reserve Act, 38 Stat. 251, as amended:	
Section 2 (12 U. S. C. 282).....	12
Section 19 (12 U. S. C. 461).....	23
Section 24 (12 U. S. C. 371).....	9, 18, 28, 29, 30, 39
National Bank Act of 1864 (R. S. 5133, 12 U. S. C. 21)....	3
R. S. 5133, 12 U. S. C. 21.....	3
R. S. 5134, 12 U. S. C. 22.....	34
R. S. 5136, as amended, 12 U. S. C. 24.....	18, 40
R. S. 5153, as amended, 12 U. S. C. 90.....	12
R. S. 5219, as amended, 12 U. S. C. 548.....	30
40 Stat. 968, 12 U. S. C. 248 (k).....	30
44 Stat. 1228, as amended, 12 U. S. C. 36.....	30
18 U. S. C. 709.....	19, 35, 41
Mass. Ann. Laws 1948, c. 167, secs. 12, 13.....	21
New York Banking Law, Section 258 (1).....	2, 9, 19, 42

### III

Miscellaneous:	Page
<i>Annual Report of the Board of Governors of the Federal Reserve System, 1952</i> , pp. 13, 32.....	12, 27
<i>Annual Report of the Comptroller of the Currency, 1912</i> , pp. 11, 12.....	18
<i>Annual Report of the Comptroller of the Currency, 1952</i> , pp. 1, 12.....	12, 26
12 C. F. R. 217.1 (e).....	23
31 C. F. R. 317.2.....	12
<i>Federal Reserve Bulletin</i> , Vol. I (1915), p. 18.....	32, 35
H. Rep. No. 83, 69th Cong., 1st Sess., p. 6.....	28
Letter of July 15, 1927, addressed to Mr. G. Patterson Crandall, Vice President, the National Bank of Westfield, Westfield, New York, from Deputy Comptroller E. W. Stearns.....	33
Letter of April 16, 1932, addressed to Deputy Superintendent August Ihlefeldt, Jr., of the New York State Banking Department, from Deputy Comptroller E. H. Gough.....	33
Letter of April 14, 1938, addressed to Mr. Arthur J. Geoghegan, Vice President, the Central National Bank of New Rochelle, New Rochelle, New York, from Deputy Comptroller Gough.....	33
Letter of December 14, 1938, signed by Deputy Comptroller C. G. Upham and addressed to the Vice President and Cashier of the First National Bank of Glens Falls, Glens Falls, New York.....	33
Letter of July 10, 1939, to the attorney General for the State of New York, from the Comptroller of the Currency.....	33
S. Rep. No. 473, 69th Cong., 1st Sess., p. 11.....	28



# ***In the Supreme Court of the United States***

OCTOBER TERM, 1953

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No. 427

THE FRANKLIN NATIONAL BANK OF FRANKLIN  
SQUARE, APPELLANT

*v.*

THE PEOPLE OF THE STATE OF NEW YORK

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*ON APPEAL FROM THE COURT OF APPEALS OF THE  
STATE OF NEW YORK*

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BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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## **OPINIONS BELOW**

The opinion of the Supreme Court of New York, Special Term (R. 654-672), is reported at 200 Misc. 557, 105 N. Y. S. 2d 81. The opinion of the Supreme Court of New York, Appellate Division (R. 679-683), is reported at 281 App. Div. 757, 118 N. Y. S. 2d 210. The opinion of the Court of Appeals (R. 684-692) is reported at 305 N. Y. 453, 113 N. E. 2d 796.

## **JURISDICTION**

The judgment of the Court of Appeals was entered on July 14, 1953 (R. 692-693). The

judgment of the Supreme Court, Special Term, on the remittitur of the Court of Appeals was entered on July 29, 1953 (R. 693-695). The petition for appeal (R. 697) was filed and allowed on September 29, 1953 (R. 697-698). The appeal was docketed in this Court on November 6, 1953 (R. 700). Probable jurisdiction was noted on December 7, 1953 (R. 701). The jurisdiction of this Court rests on 28 U. S. C. 1257 (2).

#### QUESTION PRESENTED

Whether a state statute prohibiting a national bank from using the words "saving" or "savings" in the exercise of its federal authority "to receive \* \* \* savings deposits" unconstitutionally impairs the bank's power granted by the federal banking laws.

#### STATUTES INVOLVED

The pertinent portions of the New York Banking Law, the National Bank Act, as amended, and the Federal Reserve Act, as amended, are set forth in the Appendix, *infra*, pp. 39-43.

#### STATEMENT

The State of New York brought this action under Section 258 (1) of the New York Banking Law (Appendix, *infra*, pp. 42-43) to enjoin the appellant national bank from (1) using the word "saving" or "savings" in its banking business and (2) holding itself out to the public as a "savings bank" (R. 3-5). The New York statute

prohibits banks, including national banks, other than savings banks (*i. e.*, banks incorporated on a mutual basis as savings banks under New York law, authorized by the State Superintendent of Banking to do business as savings banks, and subject to state statutory restrictions on investment) and savings and loan associations, from using the word "saving" or "savings" in their business and from soliciting deposits as savings banks.

The appellant is a national bank, organized and existing under the National Bank Act of 1864 (R. S. 5133, 12 U. S. C. 21) (R. 3). The appellant, like other national banks in New York and elsewhere, maintains a savings department as part of its regular banking business (R. 6-7). In the operation of its savings department, appellant has occasion to use the terms "saving" or "savings" in a number of ways:—It maintains signs in its bank building, and on tellers' windows, indicating the location of the savings department (R. 8-9, 588); it places on its counters deposit and withdrawal slips using the proscribed words (R. 9-10, 534A, 579); it distributes to the public coin cards, circulars, and handbills soliciting savings deposits (R. 10-11); it distributes copies of its annual report, discussing, among other matters, the operations of the savings department (R. 11, 556); and it advertises in newspapers and elsewhere for savings deposits (R. 11-12, 529-533).

being solicited. To prove this, it introduced expert opinion testimony bearing on the handicap resulting from the restriction (R. 142, 156-159, 169-170); statistics showing the decline in savings accounts, relative to demand deposits, in national banks attempting to operate under the restraint (R. 650); and the results of a public opinion poll, the "Hofstra" poll, which showed in part that while only 15% of the public did not know the meaning of the term "savings account," 53.3%, 62.7% and 52.7% respectively did not know the meaning of the terms "compound interest account," "special interest account," and "thrift account" (R. 172-417, 626-639).

The trial court denied the injunction and dismissed the complaint (R. 15). It found on the evidence that there was no violation of the state statute's provision against soliciting deposits or holding out as a savings bank (R. 656, 666-667). The state prohibition against the use of "saving" and "savings," which the appellant admitted having violated, the court held unconstitutional as conflicting with the provisions of the Federal Reserve Act empowering national banks to receive savings deposits (R. 667-672). It held that the power to do business in savings deposits necessarily included the power to advertise, and that the statute, by impairing the latter power, impaired the ability of the appellant to carry out effectively the purpose of Congress

in granting the power "to receive \* \* \* savings deposits."

On appeal, the Appellate Division reversed and granted the injunction sought by the State (R. 676-678).<sup>2</sup> On the basis of its views (1) that the words "saving" or "savings" were "so associated with the idea of 'savings bank' that, if used by another kind of bank, some people were apt to be misled into thinking it to be a mutual savings bank" (R. 680) and (2) that the statute applied to innocent as well as intentional deception, the court set aside the finding that there was no intention to deceive the public into believing that the appellant was a savings bank and granted an injunction against appellant's soliciting deposits as a savings bank (R. 679-681). It also held that there was no conflict between the state and federal statutes, on the theory that the federal laws do not expressly confer the power to use the particular words proscribed by the State. Accordingly, the court granted the injunction against appellant's "using the words 'saving' or 'savings' in relation to its banking or financial business in its dealings with the public, and from in any way soliciting or receiving deposits as a savings bank" (R. 679).

On a further appeal, the Court of Appeals restored the finding of the trial judge that there

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<sup>2</sup> Of the five judges in the Appellate Division, one dissented and one did not sit.

was no evidence that appellant had solicited deposits as a "savings bank," and modified the Appellate Division's order to eliminate the injunction on that score (R. 685). On the question of the use of the prohibited words, the court upheld the injunction. It held, two judges dissenting, that the federal statutes, while authorizing the receipt of deposits of the kind known as "savings deposits," did not empower national banks to use the particular words "saving" and "savings," so that there was no conflict (R. 687-688). It reasoned that the New York statute had the valid purpose of preventing deception and that it had not in fact seriously impaired the ability of national banks in the State to carry out the function of receiving savings deposits (R. 687-691).

#### SUMMARY OF ARGUMENT

It is undisputed that the states are precluded by the Supremacy Clause of the Federal Constitution from impairing or impeding the federally authorized functions of national banks, which are instrumentalities of the United States serving important national purposes. While this principle is acknowledged by the court below, it is violated by the court's holding that New York may forbid national banks to use the words "saving" or "savings." For the State's prohibition is irreconcilable with the express federal authority of national banks "to receive\* \* \* savings

deposits" and their further authority to exercise all incidental powers necessary to this function.

A. Long before Congress authorized such activities in so many words, national banks received "savings deposits," maintained "savings departments," and used the precisely appropriate word "savings" in describing these activities to the public. Congress, erasing any possible doubt as to the propriety of this function, then amended the federal statutes to describe the power of national banks as including the power "to receive \* \* \* *savings deposits*" (emphasis added). The State's attempt to deprive national banks of the apt and ordinary words "saving" and "savings" works a direct impairment of the authority Congress expressly conferred. That result, without more, would be enough to invalidate the New York statute as applied here.

Moreover, the record of this case, illustrating a fact the Court might well notice judicially, proves that substitute terms are sharply inferior to the word "savings" in describing savings deposits, savings accounts, and savings departments. The evidence shows that national banks are, accordingly, hampered in exercising their power "to receive \* \* \* savings deposits" by New York's requirement that they resort to words other than the common one Congress itself employed to describe this activity. Where, as here, a state undertakes to impair the efficiency of national

banks in soliciting and accepting deposits, the state's action is unconstitutional. *First National Bank v. California*, 262 U. S. 366; *Easton v. Iowa*, 188 U. S. 220; *Davis v. Elmira Savings Bank*, 161 U. S. 275.

This conclusion is reenforced when account is taken of the importance of savings deposits to national banks and of the fact that Congress has sought for national banks, in this as in other aspects of their authorized business, a footing of substantial competitive equality with other banks. Savings deposits constitute a considerable proportion of the resources national banks must have in order to serve their vital function as lending institutions. When Congress made clear the power of national banks to receive such deposits, at the same time liberalizing their inseparably related lending powers, it plainly evidenced its objective of eliminating competitive handicaps on the national banks. Other portions of the federal banking laws serve the same general purpose. Whatever its supposed reason in state policy, New York's appropriation for specified state banks of the everyday words "saving" and "savings" imposes upon national banks a competitive disability which cannot be squared with the contrary purpose of Congress.

The Federal Reserve Board and the Comptroller of the Currency, the federal agencies re-

sponsible for supervising and regulating national banks, have for some 40 years held the New York statute and similar state restrictions inapplicable to national banks. Even if the case were more doubtful, this uniform administrative interpretation would weigh heavily against the decision below. *Norwegian Nitrogen Products Co. v. United States*, 288 U. S. 294, 315; *United States v. American Trucking Ass'ns, Inc.*, 310 U. S. 534, 549.

B. The State justifies its denial to national banks of the words "saving" and "savings" on the ground that these words are "misleading." It argues that a national bank using these words in connection with its receipt of "savings deposits" might lead some people to confuse it with a state-controlled "mutual savings bank."

It may be questioned whether a national bank, properly designated as such, would be likely to create such confusion in fact. But whether or not the State's legislative judgment might be deemed reasonable, standing alone, it is not open to the State to outlaw as "deceptive verbiage" the precise, and precisely appropriate, words Congress used. If, as we urge, the use of these very words by Congress in describing the national banks' function gives the banks the incidental power to use the same words in the same way, the State's theory of deceptiveness must yield.

## ARGUMENT

**The New York statute unduly burdens the power of national banks to receive and advertise for savings deposits, and therefore conflicts with controlling Federal law**

There is no dispute in this case over the settled proposition that national banks "are instrumentalities of the Federal Government" (*First National Bank v. California*, 262 U. S. 366, 368; *Anderson National Bank v. Lockett*, 321 U. S. 233, 251), created by federal law and serving vital federal purposes.<sup>3</sup> It is equally unquestioned that the Supremacy Clause of the Constitution<sup>4</sup> precludes interference by the states,

<sup>3</sup> Among the well-known public functions of national banks are those of acting as depositaries for federal funds and as government fiscal agents (R. S. 5153, as amended, 12 U. S. C. 90), serving as agents for the sale of government savings bonds (see 31 C. F. R. 317.2), and providing a source of credit for the Government. On December 31, 1952, United States Government deposits in national banks totaled more than 3.25 billion dollars, and national banks were creditors of the Government to the extent of 35.9 billion dollars. *Annual Report of the Comptroller of the Currency*, 1952, pp. 1, 12. In addition, national banks form the backbone of the Federal Reserve System, through which the money supply of the economy is controlled and through which Government monetary policy is effectuated. National banks are required by law to belong to the Federal Reserve System (Federal Reserve Act, § 2, 38 Stat. 251, as amended, 49 Stat. 704, 12 U. S. C. 282); of the 6798 member banks of the Federal Reserve System, 4909 are national banks. See *Annual Report of the Board of Governors of the Federal Reserve System*, 1952, p. 32.

<sup>4</sup> U. S. Const., Art. VI, cl. 2:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof \* \* \* shall be the

“whether with hostile or friendly intentions, with national banks or their officers in the exercise of the powers bestowed upon them by the general government.” *Easton v. Iowa*, 188 U. S. 220, 229, 238; cf. *McCulloch v. Maryland*, 4 Wheat. 316. As the Court said in *Davis v. Elmira Savings Bank*, 161 U. S. 275, 283:

National banks are instrumentalities of the Federal government, created for a public purpose, and as such necessarily subject to the paramount authority of the United States. It follows that an attempt, by a State, to define their duties or control the conduct of their affairs is absolutely void, wherever such attempted exercise of authority expressly conflicts with the laws of the United States, and either frustrates the purpose of the national legislation or impairs the efficiency of these agencies of the Federal government to discharge the duties, for the performance of which they were created. These principles are axiomatic, and are sanctioned by the repeated adjudications of this court.

See also *Waite v. Dowley*, 94 U. S. 527, 533; *First National Bank v. Missouri*, 263 U. S. 640, 656; *Lewis v. Fidelity Co.*, 292 U. S. 559, 566; *Jennings v. U. S. Fidelity & Guaranty Co.*, 294 U. S. 216, 219; *Anderson Nat. Bank v. Lockett*,

supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

321 U. S. 233, 248; *Roth v. Delano*, 338 U. S. 226, 230.

It is equally true, of course, that Congress has neither clothed national banks with the immunity of the United States nor exempted them generally from the operation of state laws. National banks may be subject in their daily course of business to state laws relating to such matters as contracts, their acquisition of property, their right to collect debts, their right to be sued for debts, and the rights of succession to property. *Anderson National Bank v. Lockett*, 321 U. S. 233; *McClellan v. Chipman*, 164 U. S. 347, 356; *National Bank v. Commonwealth*, 9 Wall. 353, 362.<sup>5</sup> But the limiting principle remains that a national bank is protected against any state law which "interferes with the purposes of its creation, or destroys its efficiency, or is in conflict with some paramount federal law." *Lewis v. Fidelity Co.*, 292 U. S. 559, 566. In one of its more recent reaffirmances, the test was stated to be whether state "laws infringe the national banking laws or impose an undue burden on the performance of the banks' functions." *Anderson National Bank v. Lockett*, 321 U. S. 233, 248.

Among the federally authorized functions which the states are forbidden to burden unduly are not

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<sup>5</sup> As to the power of states to impose nondiscriminatory taxes on the deposits or capital of national banks, compare *Clement National Bank v. Vermont*, 231 U. S. 120, with *First National Bank v. Hartford*, 273 U. S. 548.

only those which have a directly public aspect, but also those which indirectly affect the public through their effects on the general economic strength of national banks and their ability to compete with other banks. As this Court stated in *First National Bank v. Fellows*, 244 U. S. 416, 420:

In *Osborn v. Bank*, 9 Wheat. 738, where substantially the subject was presented in the same form in which it had been passed upon in *McCulloch v. Maryland*, yielding to the request of counsel, the whole subject was reexamined and the previous doctrines restated and upheld. Considering more fully, however, the question of the possession by the corporation of private powers associated with its public authority and meeting the contention that the two were separable and the one, the public power, should be treated as within and the other, the private, as without the implied power of Congress, it was expressly held that the authority of Congress was to be ascertained by considering the bank as an entity possessing the rights and powers conferred upon it and that the lawful power to create the bank and give it the attributes which were deemed essential could not be rendered unavailing by detaching particular powers and considering them isolatedly and thus destroy the efficacy of the bank as a national instrument. The ruling in effect was that although a particular character of business might not be when iso-

latedly considered within the implied power of Congress, if such business was appropriate or relevant to the banking business the implied power was to be tested by the right to create the bank and the authority to attach to it that which was relevant in the judgment of Congress to make the business of the bank successful. It was said: "Congress was of opinion, that these faculties were necessary, to enable the bank to perform the services which are exacted from it, and for which it was created. This was certainly a question proper for the consideration of the national legislature."

While the foregoing principles have not been questioned by the court below, they are clearly violated, we believe, by the court's decision. In forbidding the appellant national bank to use, for advertising or any other purpose, the ordinary and apt words Congress and everyone else uses to describe the bank's function of accepting "savings" deposits, the New York statute collides squarely with the federal law creating the bank and its powers. The result, conflicting with the national bank's express power "to receive \* \* \* savings deposits" and the inevitably implied power to describe and advertise this function in the appropriate terms which create it, runs counter to the congressional objective to place national banks on an equal competitive footing with other banks engaged in similar activities. The very least that can be said against the

New York statute, as it has been applied in this case, is that it "impairs the efficiency" of the national bank (*Davis v. Elmira Savings Bank, supra*, at 283) and "interferes with the purposes of its creation" (*Lewis v. Fidelity Co., supra*, at 566). Because this is so, the State's effort to justify its regulation as a protection against deceit must fail. This must be the conclusion, wholly apart from the evident peculiarity of finding deceit in the use by a national bank of the ordinary English words which Congress, the courts, and the whole community employ precisely as the bank employs them. For even if the State's expropriation of the words were more plausible than it is, its judgment that the words "saving" and "savings" are "misleading" descriptions of saving and savings cannot destroy the bank's authority (stemming plainly from the implicit congressional judgment that the words mean what Congress said with them) to describe its functions and services as Congress defined them.

**A. The state statute impairs the federally created power to receive savings deposits and advertise effectively for such business**

1. Included in the broad area of necessary agreement in this case is the fact that national banks have statutory authority "to receive \* \* \* savings deposits." The practice of maintaining savings departments and receiving such deposits became widespread among the national banks

soon after the creation of the national banking system, before it was sanctioned in so many words by the federal statutes. See, *e. g.*, *Clement National Bank v. Vermont*, 231 U. S. 120; *Annual Report of the Comptroller of the Currency*, 1912, pp. 11, 12. Then, Congress, in the Federal Reserve Act, gave express recognition to the practice and express confirmation of the power of national banks to receive such deposits. As amended in 1927, Section 24 of that Act provided (Act of February 25, 1927, c. 191, 44 Stat. 1232, 12 U. S. C. 371):

Such national banks may continue hereafter as heretofore to receive time and savings deposits and to pay interest on the same, but the rate of interest which such banks may pay upon such time deposits or upon savings or other deposits shall not exceed the maximum rate authorized by law to be paid upon such deposits by State banks or trust companies organized under the laws of the State wherein such national banking association is located.\*

In addition to their specific authority "to receive \* \* \* savings deposits," national banks have been endowed by Congress with "all such incidental powers as shall be necessary to carry on the business of banking." R. S. 5136, as

\* As originally enacted, Section 24 of the Federal Reserve Act (38 Stat. 273), lacking the subsequently added explicit reference to "savings deposits," provided:

"\* \* \* and such banks may continue hereafter as heretofore to receive time deposits and to pay interest on the same."

amended, 12 U. S. C. 24. Among the most obvious of necessary "incidental powers" is the power of advertising the functions and services the bank stands ready to perform. Expert opinion in the record of this case testifies to this plain business fact (R. 135-139, 166-167). Decisions of this Court illustrate it.' And both the appellee and the court below acknowledge the power of national banks to advertise.\*

Conceding both the authority of national banks to receive savings deposits and their vital accompanying power to advertise for such business, the court below nevertheless enforced the literal mandate of the New York Banking Law and enjoined the appellant "from advertising or otherwise using the word 'saving' or 'savings' in relation to its banking or financial business in its dealings

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\* The opinion in *Clement National Bank v. Vermont*, 231 U. S. 120, 139, sets forth verbatim extracts from the advertisements of a national bank soliciting savings deposits. See, also, *Davis v. Farmers Co-operative Co.*, 262 U. S. 312, 315, where the Court noted that solicitation of trade "is a recognized part of the business of interstate transportation."

\* While the point scarcely requires extended demonstration, it may be noted that the federal banking laws recognize the role of advertising in banking by imposing prohibitions against deceptive advertising. Thus, the Federal Reserve Act forbids any bank not a member of the Federal Reserve System to "publish or display any sign, symbol, or advertisement reasonably calculated to convey the impression that it is a member of that system." 44 Stat. 628; 18 U. S. C. 709. It also forbids any bank to make use of the words "Federal" or "United States" "or any other words implying Government ownership \* \* \* in advertising or offering for sale any" security not issued by the Government. *Ibid.*

with the public" (R. 678). This sweeping prohibition affects not only advertisements, but many other aspects of appellant's "dealings with the public" in which it uses the word "savings" to identify its authorized function of receiving "savings deposits." For example, as the opinion below points out (R. 685), the appellant has a "savings department" and a special department for "Children's Savings"; it has identified some of its tellers' windows with signs containing the word "savings"; "and, in general, it routinely and extensively uses the words 'saving' and 'savings' to bring to itself 'savings deposits' in competition with savings banks and savings and loan associations in Nassau County and elsewhere." In every such instance, under the decision below, the bank must eschew the word "savings", and describe the deposits Congress called "savings deposits" with "such synonymous expressions as 'special interest account', 'thrift account' and 'compound interest account'" (R. 689).

The restriction is, in our view, a sharp and obvious impairment of the national bank's authority to receive "savings deposits." As we point out below, the words Congress used are the most appropriate and by far the best understood means of describing the function. When it authorized the function, and conferred the incidental powers necessary to its effective performance, Congress

can scarcely be supposed to have intended that the states should be free to strip national banks of the power to use the words which precisely describe their business. It is true, as the court below observed (R. 688), that "there is no Federal statute relating to the use of those words, as such." It is also true that Congress has never deemed it necessary to write a statute authorizing national banks to use the word "bank" or "banking" or any of the other basic English terms they are likely to need in communicating with the public. But, as this Court's decisions make clear, the federal authority of national banks has never been construed with the kind of hostile literalism which insists on detailed chapter-and-verse authority for every action taken and term used by the bank.<sup>9</sup> Even if there were no proof in this record, or no reason to infer, that the appellant was actually hobbled in its banking business by the New York statute, the patent inconsistency between the federal authorization and the state law would be enough to overturn the latter.

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<sup>9</sup> It is noteworthy in this connection that the law of Massachusetts permits only certain specified corporations, not including national banks, to use the words "bank" or "banking" in their names. Mass. Ann. Laws 1948, c. 167, secs. 12, 13. Nevertheless, all national banks in Massachusetts use the word "bank" in their titles and the State's officials do not appear to have deemed this usage unlawful. If the decision below is upheld, however, the continued freedom of national banks in this respect would at least be open to substantial doubt.

2. But, as the record in this case shows, there is good reason to believe that the state statute does impose a substantial burden. This Court said in *First National Bank v. California*, 262 U. S. 366, 369: "Plainly, no State may prohibit national banks from accepting deposits *or directly impair their efficiency in that regard*" [emphasis added]. A state statute which serves to "deter" depositors "from placing or keeping their funds in national banks" (*Anderson National Bank v. Lockett*, 321 U. S. 233, 250), is, accordingly, invalid. New York's statute, seriously impairing the function of communicating effectively with potential depositors who wish to make savings deposits, cannot be reconciled with these controlling principles.

When Congress empowered national banks "to receive \* \* \* *savings* deposits," it used the common words of everyday American speech to describe the authority it conferred. Laymen and technicians alike use the words "saving" and "savings" in referring to the kind of deposits and accounts in question. For example, at a time before the applicable federal statutes spoke in terms of "savings deposits" but when the broad functions of national banks were deemed to include the handling of such deposits (see *supra*, pp. 17-18), this Court, in *Clement National Bank v. Vermont*, 231 U. S. 120, referred repeatedly and quite naturally to the bank's "savings department" and quoted the bank's advertisements seek-

ing "savings accounts" (p. 139). See, similarly, the casual and matter-of-fact reference to the "savings department" of the national bank in *First National Bank v. Hartford*, 273 U. S. 548, 553. And the Board of Governors of the Federal Reserve System, exercising its authority (12 U. S. C. 461) to make definitions of "savings deposits" and other terms governing members of the Federal Reserve System (most of which—see *supra*, p. 12, n. 3—are national banks), has done the only thing it could have been expected to do: it has defined "savings deposits" to describe the kind of deposits the appellant bank can and does receive. 12 C. F. R. 217.1 (e).

More significant than the matter of technical definition is the fact that the ordinary person thinks of making "savings deposits" in "savings accounts." If this fact requires demonstration, the record of the present case supplies it. The evidence shows decisively, without contradiction, that the words "saving" and "savings" are measurably more efficacious in informing the public of the nature of the service offered by the bank than are the substitute terms the State is willing to sanction. Thus, referring to the results of the Hofstra poll bearing on this issue (*supra*, p. 6), the trial court said (R. 662):

Without regard to actual percentages, the answers develop the point which this court has appreciated all along by reason of common knowledge, viz: that the public

understands the meaning of the term "savings account", for what it really is, far better than it understands the meaning of any of the substitute terms. I am also satisfied, based upon all the proof herein and judicial notice, that the word "savings", when used with the word "account" in relation to a bank provokes a much stronger appeal to the eye and understanding of the public than do the substitutes, when placed before persons disposed to open an interest bearing bank account.

It is clear, in a word, that national banks are hampered in receiving "savings deposits" when they are forbidden to use the words Congress has used and must resort to "synonyms" which are not effectively synonymous to describe this function. It is no answer to observe, as did the court below (R. 688), that it is "*possible \* \* \** to carry on the business of receiving this type of deposit" calling it by some other name (emphasis added). Nor is it significant that national banks may even have prospered in New York despite the restraint. Cf. *Federal Trade Commission v. Raladam Corp.*, 316 U. S. 149, 152. It is noteworthy in this connection that the record contains undisputed evidence, accepted in the trial judge's findings, indicating not only that savings deposits in national banks operating under the statutory restraints have declined relative to demand deposits, but also that, owing to the restriction imposed by the State, national banks have not prospered to the

same extent as savings banks. See R. 106, 145, 147, 149. But all that matters, in any event, is that the New York prohibition impedes the vital function of communicating to the public, in the understandable language used both by the public and by Congress, the nature of appellant's business. It is immaterial that the damaging effects of the impediment may not lend themselves to precise measurement. It is enough that there is damage, proved without contradiction on the record, and that the restriction which causes the damage cuts into a function protected by paramount federal authority against impairment by any state.<sup>10</sup>

3. The savings deposit activities of national banks, thus hampered by the New York statute, cannot be dismissed as unimportant. On the

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<sup>10</sup> The court below, while it undertakes to minimize the impact of the state limitation, does not conclude that it is wholly harmless. However, even if the court had asserted such a conclusion, it would be refuted by the record. And it is clear, of course, that this Court is free to examine for itself the evidence claimed to show an undue burden upon the federally created function of the national bank. *First National Bank v. Hartford*, 273 U. S. 548, 553; cf. *Kansas City Southern R. Co. v. Alberts Comm'n Co.*, 223 U. S. 573, 591; *Truax v. Corrigan*, 257 U. S. 312, 324; *Fiske v. Kansas*, 274 U. S. 380, 385; *Great Northern Ry. Co. v. Washington*, 300 U. S. 154, 165, 167; *Pierre v. Louisiana*, 306 U. S. 354, 358; *Chambers v. Florida*, 309 U. S. 227, 228; *Taylor v. Mississippi*, 319 U. S. 583, 585-586; *Pollock v. Williams*, 322 U. S. 4, 13; *Hooven & Allison Co. v. Evatt*, 324 U. S. 652, 659; *Akins v. Texas*, 325 U. S. 398, 401; *Pennekamp v. Florida*, 328 U. S. 331, 335; *Craig v. Harney*, 331 U. S. 367, 373; *Fay v. New York*, 332 U. S. 261, 272; *Patton v. Mississippi*, 332 U. S. 463, 466; *Oyama v. California*, 332 U. S. 633, 636.

contrary, it is of vital concern to the discharge of their public functions (see fn. 3, *supra*, p. 12) that national banks should be free to receive savings deposits. It is of corollary importance that in this, as in other aspects of their business, national banks should be able to compete on as nearly an equal footing with state banks and other financial institutions as may be consistent with federal banking policy. These considerations, obviously underlying the relevant federal legislation, are thwarted by New York's statute.

"The success of almost all commercial banks depends upon their ability to obtain loans from depositors." *First National Bank v. California*, 262 U. S. 366, 370; *Anderson National Bank v. Lockett*, 321 U. S. 233, 251. The ability of commercial banks to obtain deposits from the public is the measure of their ability to invest the proceeds, and such investment is the life blood of banks. Savings deposits constitute a considerable part of this source of the investment funds of the national banking system as a whole. As of December 31, 1952, the total deposits of national banks amounted to 99.2 billion dollars, of which more than 23 billion, or 23.3 percent, comprised savings or other forms of time deposits. *Annual Report of the Comptroller of the Currency*, 1952, p. 12. "Total loans and investments of commercial banks \* \* \* increased 9 billion dollars in 1952 to a total of 141 billion. A considerable part of the expansion represented investment of

savings and time deposits." *Annual Report of the Board of Governors of the Federal Reserve System*, 1952, p. 13.

Congress has given explicit recognition to the fact that savings deposits are essential to the successful functioning of national banks; and at the same time it has evidenced its desire that in the inseparable functions of receiving and investing such deposits the national banks should be free of handicaps on their ability to compete with other banks. Pointing out that national banks are "commercial" banks, as distinguished from "mutual" savings banks, the court below concluded (R. 688) that the State could predicate upon this distinction a discrimination which gives an advantage to the latter in the business of receiving savings deposits. The apparent premise is that the only area of unfettered competition should be that involving national banks and New York commercial banks, which are subject to the same prohibition against use of the word "savings". But in creating the national banks' authority to receive savings deposits, and in pressing toward its objective of competitive equality, Congress left no room for any such basis for discrimination against national banks. Congress provided for them freedom to compete equally with all other institutions handling savings accounts.

The provision in which Congress, in 1927, expressly conferred on national banks the power to

receive savings deposits (44 Stat. 1232, 12 U. S. C. 371) (*supra*, p. 18) was part of an amended re-statement of the law governing real estate loans by national banks. The amended section extended the maximum period of loans by national banks on the security of real estate mortgages from one year to five years, at the same time limiting such loans to one-half the amount of the bank's savings deposits.<sup>11</sup> The amendments as a whole, liberalizing existing restrictions on the investments of national banks and erasing any possible doubt as to their power to receive savings deposits, were designed to place national banks on a better competitive footing with state banks. The House Committee on Banking and Currency, recommending the amendments, explained their purpose as follows (H. Rep. No. 83, 69th Cong., 1st Sess., p. 6; see also S. Rep. No. 473, 69th Cong., 1st Sess., p. 11):

The State banks and trust companies are authorized to make long-time loans upon the security of first mortgage upon city real estate. National banks, by being limited to a one-year period, have found themselves handicapped in meeting the demands of their customers in this respect. The section limits all such loans to an amount not exceeding one-half of the savings deposits in the bank, and thereby relates the real

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<sup>11</sup> In 1935, the amount was increased to 60% of time and savings deposits or to the aggregate amount of paid-in capital and surplus, whichever is greater. Act of August 23, 1935, c. 614, 49 Stat. 706.

estate loan business to savings deposits. This is a logical connection. National banks have on deposit about \$5,000,000,000 of savings deposits from about 11,000,000 depositors. This constitutes a large proportion of the entire savings business in the United States, and it has become necessary to recognize the right of a national bank with certain definite restrictions to use these funds in the same general manner in which the State banks and trust companies are using them, which includes the right to make loans upon city property, as provided above.

The enactment of this bill into law will put new life into the national banking system. The cumulative effect of its provisions will produce a situation in the Federal reserve system where the rights of the national banks will be more nearly on a par with those of the State member banks. \* \* \* The amendments which had heretofore been made to the national bank act were not sufficient to enable the national banks to compete on terms of equality with such State member banks, while at the same time they were compelled by law to bear the chief burden in supporting the Federal reserve system.

The objective of equalizing the competitive position of national banks with respect to other banks is not confined to Section 24 of the Federal Reserve Act, but is evidenced by other provisions of the federal banking laws. Thus, the National

Bank Act limits the power of states to tax the shares, dividends, and income of national banks to the rate assessed upon other capital in the hands of state institutions competing with national banks. R. S. 5219, as amended, 12 U. S. C. 548; *First National Bank v. Hartford*, 273 U. S. 548; *First National Bank v. Anderson*, 269 U. S. 341; cf. *Clement National Bank v. Vermont*, 231 U. S. 120, 134. The establishment and operation by national banks of new branch offices is permitted if state law confers a similar power upon state banks. 44 Stat. 1228, as amended, 12 U. S. C. 36; cf. *First National Bank v. Missouri*, 263 U. S. 640. And national banks may act as trustees, executors or administrators where state law permits competing state banks to exercise such functions. 40 Stat. 968, 12 U. S. C. 248 (k); *Burnes National Bank v. Duncan*, 265 U. S. 17; *First National Bank v. Fellows*, 244 U. S. 416.<sup>12</sup>

With respect to the savings deposit business, the New York statute clearly defeats this congressional end of competitive equality. As the court below observed (R. 685), the national bank employs the forbidden words "saving" and "sav-

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<sup>12</sup> The goal of competitive equality has in some areas operated both ways. For example, endeavoring to deny national banks competitive advantages over state banks, Congress has limited the interest the former may pay on savings deposits to the maximum rates authorized by state law. 38 Stat. 273, 12 U. S. C. 371.

ings" "to bring to itself 'savings deposits' in competition with savings banks and savings and loan associations in Nassau County and elsewhere." The court thought that this competition was unwarranted and not permissible. The truth is, however, that federal law authorizes and encourages the national bank "to bring to itself 'savings deposits'" no less clearly than the State authorizes and supports such efforts by the institutions it has created. But, declares the state law, only the specified state banks may say so in the ordinary language suited to the purpose. The result, whatever its supposed basis in terms of state policy (see pp. 35-37, *infra*), places on the federal institution a competitive disability, and is therefore invalid.

4. The federal agencies charged with powers of supervision and regulation of national banks have for almost forty years taken the consistent position that state laws like the one in question here could not constitutionally apply to national banks. As long ago as 1915, the Federal Reserve Board declared that a California statute like the present New York statute, which, however, did not in terms apply to national banks, was inapplicable to such banks. The opinion read in part as follows:

Inasmuch, therefore, as Congress has the right to authorize national banks to charge interest on accounts and to include in such

accounts what are generally known as "savings accounts," and since it has exercised this right, it would seem that the California statute referred to can not properly be so construed as to defeat this right.

I can not agree with Mr. Williams that depositors would necessarily be led to assume that savings accounts received by national banks would be subject to investment according to State laws; and while national banks should not be permitted to advertise themselves as "savings banks," since they are not so designated in the act, power is specifically granted to member banks to receive interest-bearing accounts, including "savings accounts," and since they possess this power the right to advertise for such accounts would seem to be a necessary incident to its exercise.

It is not believed, therefore, that the penalties prescribed by section 49 of the bank act of the State of California could be legally enforced against a national bank which advertises that it will receive and pay interest on savings accounts. [*Federal Reserve Bulletin*, Vol. I (1915), p. 18.]<sup>13</sup>

Similarly, the Comptroller of the Currency has long adhered to the position that the New York

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<sup>13</sup> It may be noted that at the time of the quoted opinion, "savings deposits" were not in terms included in the statutes defining the powers of national banks. See pp. 17-18, *supra*. The addition of these precise words by Congress in 1927 would seem to erase any possible doubt as to the correctness of the long-standing administrative construction.

statute cannot validly be applied to national banks. In a letter dated July 15, 1927, addressed to Mr. G. Patterson Crandall, Vice President, The National Bank of Westfield, Westfield, New York, Deputy Comptroller E. W. Stearns wrote: "The banking law as recently amended empowers a national bank to receive and pay interest on savings deposits, and the right to advertise and solicit such savings accounts is necessarily incidental to the exercise of that power and cannot be interfered with or denied." Again, in 1932 and in 1938, the view was reiterated that New York could not bar national banks from using the word "savings" in their title or advertisements.<sup>14</sup> And in a letter dated July 10, 1939, to

<sup>14</sup> In a letter dated April 16, 1932, to Deputy Superintendent August Ihlefeldt, Jr., of the New York State Banking Department, Deputy Comptroller E. H. Gough cited the decision in *Fidelity National Bank and Trust Co. v. Enright*, 264 Fed. 236 (W. D. Mo.), which upheld the power of a national bank to use the words "trust company" in its name despite a state statute denying this power unless granted by the state. The Deputy Comptroller deemed this decision a demonstration of the right of a national bank to use the word "savings" despite the New York statute. And in a letter dated April 14, 1938, addressed to Mr. Arthur J. Geoghegan, Vice President, the Central National Bank of New Rochelle, New Rochelle, New York, Deputy Comptroller Gough advised the bank that in the opinion of the Comptroller's office any attempt on the part of the state to prohibit national banks from using the words "saving" or "savings" or their equivalent in the banking business was of no effect. A similar letter signed by Deputy Comptroller C. B. Upham was addressed to the Vice President and Cashier of the First National Bank of Glens Falls, Glens Falls, New York, on December 14, 1938.

the Attorney General for the State of New York (quoted in the appellant's Statement as to Jurisdiction, pp. 55-60), the Comptroller reaffirmed this consistent position.<sup>18</sup>

If the issue in this case were more doubtful than we think it is, this uniform administrative construction would argue weightily against the decision below. Cf. *Norwegian Nitrogen Products Co. v. United States*, 288 U. S. 294, 315; *United States v. American Trucking Ass'ns, Inc.*, 310 U. S. 534, 549; *Adams v. United States*, 319 U. S. 312, 314-315; *Edward's Lessee v. Darby*, 12 Wheat. 207, 210. We submit that the views of the Federal Reserve Board and the Comptroller of the Currency accord with the plain intent of the governing federal statutes and that the conflicting proscription of the New York statute cannot be enforced against national banks.

**B. The New York statute as applied in this case cannot be sustained by the State's asserted purpose of preventing deception**

The court below explains New York's statutory prohibition against use by national banks of the

<sup>18</sup> Acting on the considered judgment that the word "savings" may be used by a national bank, the Comptroller of the Currency, whose approval is required for the name of a national bank (R. S. 5134, 12 U. S. C. 22), has approved names including this word. As long ago as October 18, 1865, the Comptroller chartered the National Savings Bank of Wheeling, Wheeling, West Virginia. And we are advised by the Comptroller's Office that there are in operation today eight national banks with the word "savings" included in their name.

words "saving" or "savings" on the ground that these are "misleading words" (R. 689) which may deceive the public into believing that banks using them "are mutual savings banks" (R. 688). It apparently approves the State Attorney General's concession (R. 688) that the State "does not claim for savings banks a monopoly on receipt of deposits of the 'savings' type." But while the court itself finds convenient the word savings, albeit in quotation marks, to describe the "type" of deposits in question, it sanctions the prohibition against such usage by national banks as a means of preventing deception.

If it were important, there would be room to question the validity of the judgment that a national bank, clearly designated as such, would be likely to be mistaken for a state-supervised "mutual savings bank" merely because it truthfully described its business of accepting "savings deposits."<sup>16</sup> Compare the Federal Reserve Board opinion quoted *supra*, p. 32. Indeed, the decision of the court below—finding, despite the fact that appellant extensively used the word "savings," that there was "no evidence at all that [appellant] has violated \* \* \* the other prohibition of the \* \* \* statute, which runs against 'soliciting

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<sup>16</sup> Of interest here is the fact that banks which are not national banks are forbidden by federal law to use the word "national" in their firm names. 18 U. S. C. 709, Appendix, *infra*, p. 41.

or receiving deposits as a savings bank' ” (R. 685)—casts some doubt itself on the deception theory it espouses. While the Court of Appeals was presumably distinguishing between intentional and unintentional “deception,” it is not easy to see, if the word “savings” is the means of deception that court called it, why this alone would not support the Appellate Division’s view that appellant had solicited or received deposits “as a savings bank.”

But there is, in any event, no need to consider here whether, in the absence of paramount federal legislation, New York’s appropriation of the words “saving” and “savings” (and their equivalents) for mutual savings banks and savings and loan associations would meet some constitutional test of reasonableness. For it is clear, we think, that the two dissenting judges in the New York Court of Appeals were right in denying (R. 691) the State’s power to outlaw as “deceptive verbiage” (majority opinion, R. 688) the precise words Congress chose to describe the national bank’s authority.

If, as we have argued, Congress authorized national banks to use the apt language of the federal statute and regulations, this is the end of the matter. Once it is shown to impair the federally created power, the state restriction fails, regardless of whether it might, apart from the collision with

federal law, be sustained as a valid police measure. Cf. *Johnson v. Maryland*, 254 U. S. 51; *Ohio v. Thomas*, 173 U. S. 276; *Mayo v. United States*, 319 U. S. 441. And this conclusion, at least as it applies to the circumstances of this case, entails no disregard of the delicate problem of reconciling national and state interests. For here, as Judge Fuld wrote in dissent below (R. 690), the conflict is "patent and irreconcilable." Here, acceptance of the state statute's command calls for a concession that the familiar and appropriate language in which the federal statute and regulations describe the national bank's business becomes "a misleading description" (R. 687) when it is used by the bank for the same purpose.

To refuse such a concession is not to deny the State's power to distinguish mutual savings banks from others. It only denies that the sweeping measure the State finds appropriate to this end may be used to impair the national bank's legitimate, federally authorized functions. Narrower legislation, more precisely suited to the State's purpose and consistent with federal law, could undoubtedly be contrived. But the attempted monopolization of the common words "saving" and "savings" cannot be squared with the clear authority of national banks to use these words as Congress used them.

## CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the court below should be reversed.

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## APPENDIX

1. Section 24 of the Federal Reserve Act (38 Stat. 273, as amended, 12 U. S. C. 371, reads in pertinent part as follows:

Any national banking association may make real-estate loans secured by first liens upon improved real estate, including improved farm land and improved business and residential properties. A loan secured by real estate within the meaning of this section shall be in the form of an obligation or obligations secured by mortgage, trust deed, or other such instrument upon real estate, and any national banking association may purchase any obligation so secured when the entire amount of such obligation is sold to the association. The amount of any such loan hereafter made shall not exceed 50 per centum of the appraised value of the real estate offered as security and no such loan shall be made for a longer term than five years; except that (1) any such loan may be made in an amount not to exceed 60 per centum of the appraised value of the real estate offered as security and for a term not longer than ten years if the loan is secured by an amortized mortgage, deed of trust, or other such instrument under the terms of which the installment payments are sufficient to amortize 40 per centum or more of the principal of the loan within a period of not more than ten years, and (2) the foregoing limitations and restrictions shall not prevent the renewal or extension of loans heretofore made and shall not apply to real-

estate loans which are insured under the provisions of sections 1707-1715 and 1736-1742 of this title \* \* \*. No such association shall make such loans in an aggregate sum in excess of the amount of the capital stock of such association paid in and unimpaired plus the amount of its unimpaired surplus fund, or in excess of 60 per centum of the amount of its time and savings deposits, whichever is the greater. Any such association may continue hereafter as heretofore to receive time and savings deposits and to pay interest on the same, but the rate of interest which such association may pay upon such time deposits or upon savings or other deposits shall not exceed the maximum rate authorized by law to be paid upon such deposits by State banks or trust companies organized under the laws of the State in which such association is located.

2. R. S. 5136, as amended, 12 U. S. C. 24, reads in pertinent part as follows:

Upon duly making and filing articles of association and an organization certificate a national banking association shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power—

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Seventh. To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving deposits; by buying and selling

exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of this chapter.

3. 18 U. S. C. 709 reads in pertinent part as follows:

Whoever, except as permitted by the laws of the United States, uses the words "national", "Federal", "United States", "reserve", or "Deposit Insurance" as part of the business or firm name of a person, corporation, partnership, business trust, association or other business entity engaged in the banking, loan, building and loan, brokerage, factorage, insurance, indemnity, savings or trust business; or

Whoever falsely advertises or represents, or publishes or displays any sign, symbol or advertisement reasonably calculated to convey the impression that a non-member bank, banking association, firm or partnership is a member of the Federal reserve system; or

Whoever, except as expressly authorized by Federal law, uses the words "Federal Deposit", "Federal Deposit Insurance", or "Federal Deposit Insurance Corporation" or a combination of any three of these words, as the name or a part thereof under which he or it does business, or advertises or otherwise represents falsely by any device whatsoever that his or its deposit liabilities, obligations, certificates, or shares are insured or guaranteed by the Federal Deposit Insurance Corporation, or by the United States or by any instrumentality thereof, or whoever advertises that his or its deposits, shares, or accounts are federally insured, or falsely advertises or other-

wise represents by any device whatsoever the extent to which or the manner in which the deposit liabilities of an insured bank or banks are insured by the Federal Deposit Insurance Corporation; or

\*       \*       \*       \*       \*

Shall be punished as follows: a corporation, partnership, business trust, association, or other business entity, by a fine of not more than \$1,000; an officer or member thereof participating or knowingly acquiescing in such violation or any individual violating this section, by a fine of not more than \$1,000 or imprisonment for not more than one year, or both.

This section shall not make unlawful the use of any name or title which was lawful on the date of enactment of this title.

A violation of this section may be enjoined at the suit of the United States Attorney, upon complaint by any duly authorized representative of any department or agency of the United States.

4. Section 258 (1) of the New York Banking Law reads in pertinent part as follows:

No bank, trust company, national bank, individual, partnership, unincorporated association or corporation other than a savings bank or a savings and loan association shall make use of the word "saving" or "savings" or their equivalent in its banking or financial business, or use any advertisement containing the word "saving" or "savings," or their equivalent in relation to its banking or financial business, nor shall any individual or corporation other than a savings bank in any way solicit or receive deposits as a savings bank; but nothing herein shall be construed to pro-

hibit the use of the word "savings" in the name of the Savings and Loan Bank of the State of New York or in the name of a trust company all of the stock of which is owned by not less than twenty savings banks. Any bank, trust company, national bank, individual, partnership, unincorporated association or corporation violating this provision shall forfeit to the people of the state for every offense the sum of one hundred dollars for every day such offense shall be continued.